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TO USMISSION OECD PARIS PRIORITY

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EXCON

EO 11652: XGDS-1

TAGS: ESTC, COCOM, CH, JA

SUBJ: JAPANESE PROPOSAL ON APPLICABILITY OF NOTE 4 -

IL 1565

REF : A. COCOM DOC DEF(73)1565/1

B. OECD PARIS 30588

1. WITHOUT MAKING FORMAL PRESENTATION DEL MAY STATE TO THE COMMITTEE THAT THE USG SHARES THE UNANIMOUS DESIRE THAT IF AT ALL POSSIBLE A REVISED DEFINITION OF IL 1565 (COMPUTERS) BE NEGOTIATED AND ENTER INTO EFFECT AS SOON AS POSSIBLE. INDEED EXPERTS REPRESENTING THE ENTIRE ECONOMIC, MILITARY, AND INTELLIGENCE COMMUNITY IN THIS GOVERNMENT HAVE BEEN ENGAGED IN RESTUDYING EVERY ASPECT OF THE COMPUTER EXPORT CONTROL QUESTION.

THIS EFFORT HAS ACHIEVED A MOMENTUM WITHIN THE USG WITHOUT REFERENCE TO A FIXED TIME PERIOD AND WOULD, IN OUR VIEW, ALMOST CERTAINLY BE DISTURBED BY PREMATURE IMPOSITION OF A COMMITTEE DEADLINE. THEREFORE, WE BELIEVE THAT IT WOULD BE INEXPEDIENT TO AGREE TO A
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DEADLINE WHICH MIGHT RESULT IN REPETITION OF THE 1971 LIST

REVIEW PATTERN WHEREIN SCHEDULED MEETINGS RE IL 1565 WERE HELD BUT THE PARTICIPANTS WERE NOT PREPARED TO NEGOTIATE. US AUTHORITIES ARE PRECISELY AT THE POINT WHERE THEY CANNOT PREDICT THE COMPLETION OF THEIR PREPARATIONS. NONETHELESS, WHEN AND IF PREPARATIONS DO TAKE A DEFINITE FORM, THERE WILL BE NO HESITATION ON OUR PART IN SUGGESTING A TIMETABLE.

2. IN ANY DISCUSSION DEL MAY DRAW ON THE FOLLOWING:

PERHAPS THE MORE DIFFICULT QUESTION IS RELATED TO THE FACT THAT THE JAPANESE PROPOSAL (REF A) IS FOR AN UNWRITTEN UNDERSTANDING WHILE THE BRITISH AMENDMENT TO IT IS IN THE FAIRLY CONCRETE FORM OF A STANDARD COCOM TIME CLAUSE. IF INVOKED, THE CLAUSE MIGHT HAVE THE HARSH AND READILY DISCERNABLE EFFECTS WHICH FOR WELL-KNOWN REASONS THE JAPANESE PROPOSAL IS DESIGNED TO AVOID. IT WOULD INEVITABLY RECREATE THE DEADLOCK WHICH HAS DELAYED PROGRESS ON COMPUTERS FOR OVER THREE YEARS. HOWEVER THE COMMITTEE MIGHT MANAGE TO COMBINE THESE TWO CONTRADICTORY CONCEPTS, THE STATUS QUO COULD BE VERY EASILY REIMPOSED AT THE END OF THE TIME PERIOD. THAT SITUATION COULD IN FACT BE SO EASILY RESTORED AT THE END OF THE TIME PERIOD THAT, IN THE LIGHT OF OUR INABILITY TO PREDICT OUR OWN POSITIONS, ACCEPTANCE OF THE UK NOTE COULD RESULT IN THE NEGATION OF OUR AGREEMENT TO THE JAPANESE PROPOSAL. THEREFORE, IN THE US VIEW, THE INTERIM HANDLING OF NOTE 4 SHOULD BE TREATED IN THE SAME SPIRIT AS WAS AGREED CONCERNING IL 1520. NO TIME LIMIT WAS IMPOSED FOR THE END OF THE LIST REVIEW AND IT WAS MERELY AGREED THAT PENDING REDEFINITION, THE EASY ACCESS CLAUSE WOULD BE SUSPENDED.

3. OBVIOUSLY, THE FOREGOING INDICATES THAT REGARDLESS OF FORMAL AGREEMENT BY THE COMMITTEE, UNDERSTANDING DOES IN FACT EXIST THAT FOR THEIR PART, US AUTHORITIES ARE ALREADY STRIVING TO BE IN A POSITION TO COMMENCE NEGOTIATIONS WITHIN SIX MONTHS IF AT ALL POSSIBLE. THEREFORE, WE WOULD HAVE NO PROBLEM WITH SUCH AN UNDERSTANDING IN PRINCIPLE, BUT WOULD INSIST THAT DEL'S REMARKS TO THAT EFFECT IN THE RECORD WOULD BE SUFFICIENT.

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4. WHEN VIEWED IN THE PARTICULAR LIGHT OF BILATERAL DISCUSSIONS OVER THE YEARS, THE SECOND PART OF THE JAPANESE UNDERSTANDING COMES CLOSE TO A COMMITMENT TO THE SUBSTANCE OF ANY US PROPOSALS OR POSITIONS. AT THIS POINT IN OUR PREPARATIONS THERE IS SIMPLY NO BASIS WITHIN THE USG FOR ACCEPTING OR REJECTING SUCH AN UNDERSTANDING. (FYI - DEL WILL PROBABLY AGREE THAT THE MOTIVATION FOR

THE UK TIME LIMIT PROPOSAL HINGES ON ANXIETY THAT THE US WILL INSIST ON LIMITING ANY REVISION TO PRC TECHNOLOGICAL LEVELS. THEREFORE, THEIR EFFORT IS TO SET UP A SITUATION

WHEREIN THE UK CAN REJECT SUCH A US PROPOSAL BUT, BECAUSE THE CD WOULD BE RESTORED AUTOMATICALLY, ALL THE PRESSURE ON THIS ISSUE COULD BE REVERTED TO THE US. WITTINGLY OR NOT, THIS PART OF THE JAPANESE "UNDERSTANDING" LEADS IN THAT DIRECTION AND SHOULD BE REJECTED. END FYI). INASMUCH AS EACH PC WILL TAKE POSITIONS ON WHATEVER FORMAT AND PARAMETERS ARE PLACED ON THE TABLE FOR NEGOTIATION, SUCH AN UNDERSTANDING IN ADVANCE WOULD BE MISLEADING IN THESE PARTICULAR CIRCUMSTANCES. EVEN IF IT WERE GIVEN, WERE ANY POSITION BELIEVED BY ANY PC TO INVOLVE SIGNIFICANT STRATEGIC SELF-INTEREST, THE UNDERSTANDING COULD NOT THEN BE OBSERVED. OBVIOUSLY, ONLY ONE UNDERSTANDING IS POSSIBLE AT THIS POINT, VIZ, ANY PROPOSED REVISION MUST IMPROVE ON THE PRESENT DEFINITION OR ITS NEGOTIATION WILL BE IMPOSSIBLE. WE WILL HAVE NO BASIS EVEN FOR A COMMITMENT TO OFFER A BETTER DEFINITION UNTIL OUR STUDY ADVANCES FURTHER. KISSINGER

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